bearing from the Beeville NDB (latitude 28°22'03" N., longitude 97°47'39" W.) extending from the 6.5-mile radius to 11.5 miles southeast of the NDB.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a); and sec. 6(c), Department of Transportation Act (49 U.S.C 1655(c)).)

NOTE.—The FAA has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Fort Worth, Tex., on July 12, 1978.

PAUL J. BAKER,
Acting Director,
Southwest Region.

[FR Doc. 78-20371 Filed 7-21-78; 8:45 am]

[4910-13]

[14 CFR Part 71]

[Airspace Docket No. 78-ASW-28]

TRANSITION AREA

Proposed Designation: Hebbronville, Tex.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The nature of the action being taken is to propose designation of a transition area at Hebbronville, Tex. The intended effect of the proposed action is to provide controlled airspace for aircraft executing instrument approach procedures to the Jim Hogg County Airport. The circumstance which created the need for the action was a requirement to provide capability for flight under instrument weather conditions to the airport.

DATES: Comments must be received by August 23, 1978.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101. The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Tex. An informal docket may be examined at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

John A. Jarrell, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101, telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION: Subpart G 71.181 (43 FR 440) of FAR part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting IFR activity. Designation of the transition area at Hebbronville, Tex., will necessitate an amendment to this subpart.

COMMENTS INVITED

Intersted persons may submit such written data, views or arugments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101, or by calling 817-624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should contact the office listed above.

THE PROPOSAL

The FAA is considering an amendment to subpart G of part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a transition area at Hebbronville, Tex.[1] The FAA believes this action will enhance IFR operations at the Jim Hogg County Airport by providing controlled airspace for aircraft executing proposed instrument approach procedures using the newly established nondirectional radio beacon (NDB) located on the airport. Subpart G of part 71 was republished in the FEDERAL REGISTER on January 3, 1978 (43 FR 440).

[1]Map filed as part of the original document.

DRAFTING INFORMATION

The principal authors of this document are John A. Jarrell, Airspace and Procedures Branch, and Robert C. Nelson, Office of the Regional Counsel.

THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) as republished (43 FR 440) by adding the Hebbronville, Tex., transition area as follows:

HEBBRONVILLE, TEX.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Jim Hogg County Airport (lat. 27°20'57" N., long. 98°44'12" W.), within 3.5 miles each side of the 326° bearing from the proposed NDB (lat. 27°21'13" N., long. 98°44'38" W.) extending from the 5-mile radius to 11.5 miles northwest of the proposed NDB.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); and sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

NOTE.—The FAA has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Fort Worth, Tex., on July 11, 1978.

PAUL J. BAKER,
Director,
Southwest Region.

[FR Doc. 78-20375 Filed 7-21-78; 8:45 am]

[4910-13]

[14 CFR Part 71]

[Airspace Docket No. 78-RM-17]

DENVER TERMINAL CONTROL AREA

Proposed Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This amendment proposes to alter the Denver Terminal Control Area (TCA). The amendment is necessary because of the relocation of the Denver VOR on November 2, 1978. The present terminal control area utilizes the Denver VOR to describe boundaries of the terminal control area and the amendment will utilize the new Denver VOR to describe boundaries.

DATE: Comments must be received on or before August 21, 1978.

ADDRESS: Send comments on the proposal to: Chief, Air Traffic Division, Attention: ARM-500, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colo. 80010. A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colo. 80010.

FOR FURTHER INFORMATION CONTACT:

Mr. Joseph T. Taber, Airspace Specialist, Operations, Procedures and Airspace Branch (ARM-537), Air Traffic Division, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colo. 80010, telephone 303-837-3937.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Division, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colo. 80010. All communications received will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling 202-426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

THE PROPOSAL

The Federal Aviation Administration is considering an amendment to subpart K of part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the terminal control area (TCA) at Denver, Colo. The present terminal control area is based in part on the Denver VOR which is scheduled to be relocated on November 2, 1978 making the present terminal control area incorrect. It is proposed to amend the terminal control area utilizing the new Denver VOR and altering some boundaries and floors to increase the effectiveness of the terminal control area for all users. Additionally, some floor changes allow for transiting the area without penetrating the terminal control area. Accordingly, the Federal Aviation Administration proposes to amend subpart K of part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

By amending 71.401 so as to alter the following terminal control area to read:

DENVER, COLO.

Denver, Colo., terminal control area, primary airport, Denver Stapleton International Airport (lat. 39°45'55" N., long. 104°52'46" W.) Denver VORTAC (lat. 39°48'02.12" N., long. 104°53'12.26" W.). Denver—Stapleton International distance measuring equipment (DME) antenna, (lat. 39°45'51" N., Long. 104°53'54" W.).

BOUNDARIES

Area A: That airspace extending upward from the surface to and including 11,000 feet MSL beginning at a point 10 miles north of the Stapleton International DME antenna and 1.5 miles west of the Denver VORTAC 004° radial; thence cw along the 10 mile radius arc of the Stapleton International DME antenna to and south parallel 2.5 miles east of the Denver VORTAC 004° radial, to and cw along the 7-mile radius area of the Stapleton International DME antenna to and west along Colfax Avenue to and south parallel 3.5 miles east of the Denver VORTAC 184° radial to and cw along the 7-mile radius arc of the Stapleton International DME antenna to and north parallel 3.5 miles west of the Denver VORTAC 184° radial to and west parallel 5 miles south of the Denver VORTAC 273° radial to and cw along the 7-mile radius of the Stapleton International DME antenna to and north parallel 1.5 miles west of the Denver VORTAC 004° radial to point of beginning excluding prohibited area P26.

Area B: That airspace extending upward from 7,000 feet MSL to and including 11,000 feet MSL bounded on the north by the 16-mile point of the Stapleton International DME antenna and 3.5 miles west of the Denver VORTAC 004° radial, thence cw along the 16-mile radius arc of the Stapleton International DME antenna to and south parallel 4 miles east of the Denver VORTAC 004° radial to and cw along the 10-mile radius arc of the Stapleton International DME antenna to and east parallel 1.5 miles north of the Denver VORTAC 093° radial to and cw along the 16-mile radius arc of the Stapleton International DME antenna to and west along Colfax Avenue to and cw along the 10-mile radius arc of the Stapleton International DME antenna to and north parallel 3.5 miles west of the Denver VORTAC 004° radial to point of beginning excluding areas A and C.

Area C: That airspace extending upward from 7,500 feet MSL to and including 11,000 feet MSL bounded on the north by Colfax Avenue, on the east by the 16-mile radius arc of the Stapleton International DME antenna on the west by area A and a line parallel 3.5 miles west of the Denver VORTAC 184° radial to and east along a line 8.5 miles south and parallel of the extended centerline of runway 26L/8R Stapleton International Airport to and southeast bound along the 162° radial of the Denver VORTAC to the 16-mile radius arc of the Stapleton International DME antenna.

Area D: That airspace extending upward from 8,000 feet MSL to and including 11,000 feet MSL within a 16-mile radius of the Stapleton International DME antenna bounded on the west by 105°11'00" W. and that airspace east of Denver between the 16-mile and 20-mile radius circles centered on the Stapleton International DME antenna bounded on the north by Interstate 70 and on the west by the 162° radial of the Denver VORTAC excluding areas A, B and C.

Area E: That airspace extending upward from 9,000 feet MSL to and including 11,000 feet MSL between the 16-mile and 20-mile radius circles centered on the Stapleton International DME antenna bounded on the north by a line 1.5 miles north of the Denver VORTAC 093° radial and on the south by Interstate 70 and that airspace north of Denver bounded on the west by a line 3.5 miles west of the Denver VORTAC 004° radial and on the east by a line 4 miles east of the Denver VORTAC 004° radial.

Area F: That airspace extending upward from 10,000 feet MSL to and including 11,000 feet MSL between the 16-mile and 20-mile radius circles centered on the Stapleton International DME antenna excluding areas D and E and that area west of 105°11'00" W. and northwest of a line 12 miles west of the Denver VORTAC 004° radial between the 16-mile and 20-mile radius arcs of the Stapleton International DME antenna.

DRAFTING INFORMATION

The principal authors of this document are Mr. Joseph T. Taber, Air Traffic Division, and Mr. Daniel J. Peterson, Office of the Regional counsel, Rocky Mountain region.

(Section 307(a) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1348(a)), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major propsal requiring preparation of an economic impact statement under Executive Order 11821 and OMB Circular A-107.

Issued in Aurora, Colo. on July 12, 1978.

M. M. MARTIN,
Director,
Rocky Mountain Region.

[FR Doc. 78-20374 Filed 7-21-78; 8:45 am]

[1505-01]

CIVIL AERONAUTICS BOARD

[SPDR-65; dated: July 7, 1978]

[14 CFR Parts 371, 372a, 373, 378, 378a]

ADVANCE BOOKING CHARTERS; TRAVEL GROUP CHARTERS BY DIRECT AIR CARRIERS AND STUDY GROUP CHARTERERS, INCLUSIVE TOUR CHARTERS; ONE-STOP-INCLUSIVE TOUR CHARTERS

Notice of Proposed Rulemaking to Permit Air Taxi Operators and Commuter Air Carriers to Operate Special Regulation Charters

Correction

In FR Doc. 78-19497 appearing on page 30295 in the issue of Friday, July 14, 1978, on page 30297 in § *378a.42 Tariffs to be on file for charter trips.*, the 3d line should read, "unless it shall have on file with * * *".

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 240, 249]

[Release No. 34-14970; File No. S7-747]

SHAREHOLDER COMMUNICATIONS, SHAREHOLDER PARTICIPATION IN THE CORPORATE ELECTORAL PROCESS AND CORPORATE GOVERNANCE GENERALLY

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to rules and forms.

SUMMARY: The Commission is proposing for comment rule, form and schedule amendments intended to provide investors with information relevant to an informed assessment of the effectiveness of registrants' boards of directors, the terms of settlements of proxy contests, and the voting policies and procedures of institutions subject to the Commission's proxy rules which exercise voting rights with respect to equity securities held for their own accounts or for the accounts of others. Additionally, the Commission requests comments on a proposed rule which would afford shareholder-proponents an opportunity to review management statements in opposition to shareholder proposals prior to the mailing of issuers' proxy soliciting materials.

DATE: Comments must be received on or before September 18, 1978.

ADDRESS: All comments should be directed in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT:

Barbara L. Leventhal, Richard B. Nesson or Jennifer A. Sullivan, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549 202-755-1750, 755-1754 or 376-8090.

SUPPLEMENTARY INFORMATION: The SEC today published for comment proposed amendments to Regulation 14A (17 CFR 240.14a-1 et seq.) and schedule 14A (17 CFR 240.14a-101) under the Securities Exchange Act of 1934 [15 U.S.C. 78a, et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)], as well as related amendments to forms 8-K (17 CFR 249.308) and 10-Q (17 CFR 249.308a) thereunder. The proposals are designed to increase the information available to investors regarding (1) the structure, composition and functioning of issuers' boards of directors; (2) resignations of directors; (3) attendance at board and committee meetings; (4) the voting policies and procedures of certain institutions subject to the Commission's proxy rules which exercise voting rights with respect to equity securities held for their own accounts or for the accounts of others; and (5) the terms of settlement of proxy contests. The Commission also has requested comments on a rule proposal which, if adopted, would enable shareholder-proponents to review management statements in opposition to shareholder proposals prior to the mailing of issuers' proxy soliciting materials. These proposals represent the first stage of the Commission's response to issues which have been raised in connection with its ongoing re-examination of rules relating to shareholder communications, shareholder participation in the corporate electoral process and corporate governance generally.

I. Background

In Securities Exchange Act Release No. 13482 (April 28, 1977), 42 FR 23901 (May 11, 1977), the Commission announced its intention to conduct a broad re-examination of its rules relating to shareholder communications, shareholder participation in the corporate electoral process and corporate governance generally. The release indicated that the decision to undertake the study was based, in part, on the fact that recent events, such as the numerous corporate disclosures concerning questionable and illegal payments, had served to focus public attention on the subject of corporate accountability, and raised questions about the adequacy of existing checks on corporate management. These events underscored the concerns expressed many years ago by Berle and Means, and more recently by numerous observers,[1] that directors who are chosen by management do not effectively monitor management conduct, and furthermore, since elections of directors are most often mere ratifications of management slates, directors are not answerable to shareholders through the corporate electoral process.

Preparatory to holding public hearings, written comments were solicited on a number of questions relating to (1) the adequacy of existing avenues of communication between shareholders and corporations, and, particularly, whether shareholders should be provided with more information than is now available with respect to socially significant matters affecting their corporations; (2) whether rule 14a-8, regarding shareholder proposals, should be amended to further facilitate the presentation of shareholder views and concerns in the corporate proxy materials; (3) the role of shareholders in the corporate electoral process, and whether the Commission should amend its proxy rules to provide shareholders access to corporate proxy materials for the purpose of nominating persons of their choice to serve on boards of directors; and (4) whether additional disclosure relevant to an assessment of the quality and integrity of management should be required. The Commission also raised general inquiries concerning the need for Federal minimum standards or Federal chartering legislation, the role of the self-regulatory organizations in improving corporate governance, and the costs and benefits associated with various regulatory approaches.

On August 29, 1977, the Commission published a second release [2] announcing the schedule for public hearings, and setting forth a restatement of the issues to be considered based on the public comments which had already been received. The release stressed:

> While the proxy solicitation process is indeed a central focus of the present inquiry it is clear that the issues being studied transcend the proxy rules in significance, and include the broader and more fundamental question of how corporations can best be made more responsive to their shareholders and the public at large.[3]

The public hearings commenced in Washington on September 29, 1977, and continued for 5½ weeks, with sessions held in Los Angeles, New York

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[1] A. Berle and G. Means, "The Modern Corporation and Private Property" (1932); See, e.g., Schwartz, "A Case For Federal Chartering of Corporations," 31 Bus. Law. 1125 (1976); Moscow, "The Independent Director," 28 Bus. Law. 9 (1972); Eisenberg, "Access to the Corporate Proxy Machinery," 83 Harv. L. Rev. 1489 (1970).

[2] Securities Exchange Act Release No. 13901 (August 29, 1977), 42 FR 44860 (Sept. 7, 1977).

[3] Id. at 4.

and Chicago. In total, more than 300 persons and organizations including corporations, business associations, government officials, public interest and religious groups, law firms, bar associations, financial analysts, academics, accountants, and individuals submitted written comments or testified during the proceedings. These persons expressed a multitude of views on a large number of issues ranging from narrow technical questions arising under existing proxy rules to broad philosophical inquiries concerning means by which corporations can be made more responsive to shareholders and the public at large.[4]

Despite the diversity of opinion expressed with respect to the scope of existing problems in corporate governance and corporate accountability and the means by which reform could best be achieved, there was general agreement among a majority of commentators that a strong board of directors, which is able to exercise independent judgment, is a key element in accountability. Various methods of strengthening the independence of corporate boards were suggested, including voluntary action by corporations to nominate more outside directors to serve on their boards and to establish strong committee systems, the creation of expanded opportunities for meaningful shareholder participation in the corporate electroal process, and the adoption by the Commission and/or the self-regulatory organizations of new disclosure and substantive requirements relating to the structure, composition, and functions of corporate boards. A number of commentators also expressed their support for the enactment by Congress of legislation which would mandate certain changes in board composition, responsibilities, and operations.

Similarly, although conflicting views were expressed concerning the proper role of the Commission in improving corporate governance, commentators voiced substantial support for the promulgation of disclosure requirements by the Commission which are designed to provide investors with information related to matters affecting corporate governance and to stimulate the adoption by registrants of improved governance mechanisms.

Based on its review of the record in this proceeding, and in light of the significance, complexity, volume, and variety of issues under consideration, the Commission has determined to address the issues which have been raised in stages. Stage one, consisting of the publication of the rulemaking proposals contained herein, is intended primarily to provide investors with expanded information on certain matters, including the structure, composition, and functioning of registrants' boards of directors and the voting policies and procedures of institutions subject to the Commission's proxy rules which exercise voting power with respect to equity securities held for their own accounts or for the accounts of others.

Stage two, the publication of a comprehensive staff report, will address some of the more complex questions which have been raised in this proceeding relating to corporate governance and the means by which corporations can best account to shareholders and the public. As presently contemplated, the report will endeavor to discuss such issues as existing checks on corporate conduct, available shareholder remedies, the role of the board of directors and the need for structural board reforms and clarification of directors' responsibilities, and the respective roles of the private sector, shareholders, the Commission, the self-regulatory organizations and Congress in corporate accountability.

Following publication of the staff report, the Commission will consider as the third stage of this proceeding what further action, if any, is appropriate with respect to shareholder communications and shareholder participation in the corporate electoral process generally and will determine whether to publish additional rulemaking proposals and to recommend to Congress or support new legislation which would affect corporate governance.

II. Proposed Rules

A. Rules which would require increased disclosure concerning the structure, composition and functions of Corporate Boards of Directors

In Securities Exchange Act Release Nos. 13482 and 13901 (April 28, 1977 and August 29, 1977), the Commission requested public comments and testimony on the advisability of developing a number of new disclosure requirements applicable to proxy statements. The contemplated disclosure items were directed primarily at providing shareholders with information about the structure, composition and functions of corporate boards of directors. Among the issues raised were the desirability of disclosing the existence, responsibilities and composition of nominating and other key standing committees of the board; the need for expanded information about business and/or personal relationships between any nominee or his affiliates and the issuer or its officers and directors; whether information about the time devoted to corporate affairs and issues dealt with by incumbents in the previous fiscal year would be meaningful; the usefulness of information relating to director resignations and/or decisions not to stand for re-election; the extent to which information relating to other board memberships and certain outside activities would reflect potential conflicts of interest or give a meaningful indication of the time available for services to the issuer; and whether disclosure requirements relating to management remuneration should be amended to call for more detailed and comprehensive information than is currently available.[5] While reaction to the various disclosure proposals was mixed, as noted above, the vast majority of commentators who addressed these questions expressed support for the development of improved disclosure requirements.

The Commission has determined to publish for comment several rule proposals similar to those described above.[6] The Commisson believes that the publication of these proposals, which are intended to facilitate informed voting decisions by providing shareholders with information material to an assessment of the quality and effectiveness of corporate boards of di-

[4] In order to facilitate further consideration of these issues by interested members of the public, the Commission has determined to make available on written request a copy of a staff prepared summary of comments and testimony submitted in the course of this proceeding. The summary, which will be available by July 25, 1978, can be obtained by writing to SEC Publications, 500 North Capitol Street, Washington, D.C. 20509. It should be noted, however, that the actual written submissions and oral testimony received in this proceeding, and not the summaries and future analyses thereof, will form the basis for the Commission's consideration of any final rules designed to revise or amend the proxy rules.

[5] Proposed amendments to disclosure requirements relating to management remuneration will be the subject of a separate release and are not discussed herein.

[6] A number of similar revisions to Schedule 14A had been published for comment prior to the institution of the proxy rule reexamination. These proposed amendments to Schedule 14A would require information regarding the background of directors and nominees, including memberships on any committee of the board of directors, all directorships of any other reporting company, the nature of any family relationships with any other director or nominee and a description of any of certain specified events which have occurred during the past 5 years. Securities Act Release No. 5758 (Nov. 2, 1976) 41 FR 49493 (Nov. 9, 1976).

Final action on these proposals was deferred pending analysis of the record compiled in the instant proceeding. The proposals published today supersede, in some respects, those published in Securities Act Release No. 5758 (Nov. 2, 1976). Specifically, the proposal concerning committee information is superseded by new item 6(d) proposed herein and the proposed amendment to elicit information regarding family relationships is superseded by proposed item 6(a)(6). The balance of the proposals contained in Securities Act Release No. 5758, supra, will be the subject of a separate release in the near future.

rectors, is an appropriate exercise of its rulemaking authority pursuant to section 14(a) of the Securities Exchange Act. Additionally, it is the view of the Commission that the disclosure requirements proposed herein would be conducive to the development of improved accountability mechanisms by issuers to whom the requirements would apply. The Commission agrees with those commentators who stressed the importance of a board of directors that acts as an independent force in corporate affairs, and it believes that the proposals described below would be consistent with the evolution of stronger, more independent boards of directors, better equipped to discharge their fiduciary obligations and to represent the interests of the shareholders who elect them.

1. DISCLOSURE OF BOARD COMPOSITION—PROPOSED ITEM—ITEM 6(A)(6)

In the Commission's view, the interests of shareholders are best served by a board of directors which is able to exercise independent judgment, ask probing questions of management, and bring to the company a broader perspective than that of management. This view is reflected in settlements which have been negotiated in a number of enforcement actions which the Commission has brought,[7] in the audit committee policy of the New York Stock Exchange,[8] and in the conclusions expressed in various private sector studies of the subject of corporate governance.[9] It is also evidenced by the voluntary action taken by many publicly held corporations in recent years to include on their boards persons with diverse backgrounds who are not affiliated with management.

While the Commission recognizes that the presence on the board of all or a majority of independent directors will not, in every case, assure the exercise of independent judgment by the board[10] and that, conversely, boards which include affiliated or management directors in most instances discharge their obligations in a conscientious manner, it believes that board composition is sufficiently important that shareholders whose proxies are solicited with respect to an election of directors should be provided with information concerning the affiliation of board members and nominees with management. Under existing schedule 14A, relating to the content of proxy statements, certain limited information about the affiliations of nominees is required to be disclosed. Item 6(a)(2), for instance, requires disclosure of the principal occupation of the nominee and therefore would elicit information, where applicable, that a nominee is employed by the issuer. Additionally, item 7(f) requires disclosure of certain corporate transactions in which a nominee for election as a director has a material interest. The Commission believes that additional information regarding the affiliations of nominees may be useful to investors in assessing directors' independence from management.

Based on the foregoing, the Commission has determined to publish for comment proposed item 6(a)(6). As proposed, the item would require issuers, other than registered investment companies, to identify each nominee and each director whose term of office as a director will continue after the annual meeting as either a "management director," an "affiliated nonmanagement director," or an "independent director," as these terms are defined in instructions to the item. The item would also require, with respect to an "affiliated non- management director," a brief description of the relationship by reason of which the nominee is deemed to be "affiliated" under the item. The included definitions are provided solely for the purpose of complying with item 6(a)(6) and should not be confused with other similar terms appearing elsewhere in the Federal securities laws. They are intended to distinguish between outside directors who are completely unaffiliated with the issuer and those who have certain business or personal relationships with the issuer. In this regard, it should be noted that the Corporate Directors Guidebook[11] prepared by the American Bar Association employs the terms "unaffiliated non-management director" and "affiliated non-management director" to express this distinction. Comments are specifically requested with respect to the terminology which most clearly expresses this concept.

The instructions to the item contain definitions of the three terms. Paragraph (1) defines the term "management director" as any person who is an officer or employee of the issuer or any of its parents, subsidiaries or other affiliates.[12] Paragraph (2) of the instructions defines the term "affiliated nonmanagement director" as a person having any of the following business or personal relationships with the issuer or its management:

(1) Under paragraph (2)(i), any person who has been within the last 5 years an officer or employee of the corporation or any of its parents, subsidiaries or affiliates;

(2) Under paragraph (2)(ii), any person who has certain defined family relationships by blood, marriage, or adoption to an officer of the corporation, its parents, subsidiaries or affiliates;

(3) Under paragraph (2)(iii), any person who is or has within the last 2 years been an officer, director, employee or owner of an interest in excess of 1 percent of the equity of an entity with certain defined significant business relationships with the issuer. Subparagraphs (A), (B), (D), and (E) refer to an entity which has been, within the last year, or is proposed to be, within the next year, a significant customer of or supplier to the issuer. For purposes of these subparagraphs, the standard of significance for the amount of business done, or to be done, between the entity and the issuer is the lesser of 1 percent of gross revenues for the last fiscal year or $1,000,000. Reference is made in the instructions to payments which are "proposed" during the next fiscal year. Payments which are "proposed" to be made would include payments which are the subject of a formal agreement or are reasonably expected to be made pursuant to any understanding or course of conduct between the issuer and the other entity. Subparagraph (C) would include a significant creditor of the issuer;

(4) Under paragraph (2)(iv), any person who has received within the last year or is proposed to receive within the next year more than $25,000 from the issuer;

(5) Under paragraph (2)(v), any person having a material interest in a transaction which the issuer is required to disclose under item 7(f) of schedule 14A;

(6) Under paragraph (2)(vi), any person who is a member or employee of, or is associated with, a law firm which is proposed to be, or within the last 2 years has been, retained by the corporation. This paragraph would include any partner or owner of an equity interest in the firm as well as associates, other employees, and any person who is of counsel to the firm;

(7) Under paragraph (2)(vii), any director, officer, or employee of an investment banking firm which is pro-

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[7] "SEC v. Brad Ragan, Inc." (W.D. N.C., Dec. 2, 1976) (Consent) (LR-7681, Dec. 2, 1976), "SEC v. Eastern Freight Ways, Inc." (D.D.C., Nov. 19, 1975) (Consent) (LR-7171, Nov. 21, 1975), "SEC v. Emersons, Ltd." (D.D.C., May 11, 1976) (Consent) (LR-7392, May 11, 1976).

[8] See CCH NYSE Guide at paragraph 2495H.

[9] See, e.g., Subcommittee on Functions and Responsibilities of Directors, American Bar Association, Corporate Directors Guidebook, 33 Bus. Law. 1620 (1978);

[10] Cf., "In the Matter of National Telephone Company, Inc." Securities Exchange Act Release No. 14380 (January 16, 1978).

[11] See Corporate Directors Guidebook, supra, 33 Bus. Law. 1620 (1978).

[12] An "affiliate" of a specified person is defined as "a person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified." Securities Exchange Act Rule 12b-2, 17 CFR 240.12b-2.

posed to perform, or in the last 2 years has performed, services for the corporation; and

(8) Under paragraph (2)(viii), a control person (as defined in rule 12b-2, CFR 240.12b-2) of the issuer other than as a director of the issuer.

The term "independent director" as defined in paragraph (3) of the instructions refers to any person who is neither a "management director" nor an "affiliated nonmanagement director." Paragraph (4) of the instructions makes clear, however, that there may be relationships between the nominee and the issuer and its management which, though not described under paragraph (2), are such that they could be viewed as interfering with such nominee's exercise of independent judgment, and that to refer to such nominee as an "independent director" would be inappropriate.

Proposed item 6(a)(6)(ii) would be applicable to investment companies registered under the Investment Company Act of 1940 and would require that such companies identify which nominees and other persons whose term of office as a director will continue after the annual meeting are "interested persons" as the term is defined in that act. This item would also require, with respect to any person so identified, a brief description of the relationship by reason of which the person is deemed to be an "interested person."

2. PROPOSED ITEM 6(D)—DISCLOSURE RELATING TO COMMITTEES OF THE BOARD

Proposed item 6(d)[13] would require disclosure of whether or not the issuer has a standing audit, nominating and compensation committee of the board of directors. Issuers who disclose the existence of a nominating committee also would be required to state whether that committee will consider nominees recommended by shareholders and, if so, describe the procedures to be followed by shareholders in submitting recommendations. With respect to all three committees, the issuer would be required to state the number of committee meetings held by each such committee since the date of the most recent annual meeting of shareholders.[14] Identify the committee members and indicate whether they are "management," "affiliated non management" or "independent" directors as those terms are defined in instructions to item 6(a)(6). In this regard, the Commission believes that it is desirable that these three standing committees, which have responsibilities in areas where disinterested oversight is nost needed, normally be composed entirely of persons independent of management.* While the Commission believes that management and persons affiliated with management have valuable expertise and knowledge, it is believed that their input can be effectively provided or obtained in a variety of ways that do not necessitate actual committee membership.

The Commission believes that development of stronger committee systems will enable boards of directors to better serve corporations in an oversight capacity. The Commission endorsed the concept of audit committees as early as 1940 and published a release recommending the establishment of a committee composed of nonofficer members of the board of directors who would be responsible for nominating and arranging the details of the auditor's engagement.[15] Since then, the Commission has issued a number of releases concerning audit committees including, in 1974, an amendment to the proxy rules requiring disclosure of the existence and composition of audit committees.[16] Other entities and professional organizations also have supported the establishment of audit committees and on March 9, 1977, the New York Stock Exchange amended its listing requirements to provide that every listed company must, before June 30, 1978, establish an audit committee comprised solely of nonmanagement directors.[17] Concerns with functions and responsibilities of audit committees have become ever greater as a result of the recent enactment of the Foreign Corrupt Practices Act of 1977.[18]

Similarly, the Commission believes that information relating to nominating committees would be important to shareholders because a nominating committee can, over time, have a significant impact on the composition of the board and also can improve the director selection process by increasing the range of candidates under consideration and intensifying the scrutiny given to their qualifications. Additionally, the Committee believes that the institution of nominating committees can represent a significant step in increasing shareholder participation in the coporate electoral process, a subject which the Commission will consider further in connection with its continuing proxy rule reexamination.

Finally, the Commission believes that disclosure concerning an issuer's compensation committee and its composition would permit investors to better assess the process by which management and director compensation is determined. Although the Commission is aware that compensation committees are less prevalent than audit committees, and that their roles are still evolving, it is the Commission's view, based on its administrative experience, that management compensation is a matter of significant concern to investors. In light of the generally acknowledged importance of these three committees the Commission believes that disclosure concerning the composition of, and number of meetings held by, an issuer's audit, nominating and compensation committee, as contemplated in proposed item 6(d), would provide meaningful information to investors.[20]

Although proposed item 6(d) does not specifically require issuers to discuss the functions of the committees as to which disclosure is required, a note to the item indicates that a statement that the issuer has an audit, nominating or compensation committee connotes that it has a committee that performs the functions customarily performed by such a committee. Customary functions for audit, nominating and compensation committees are set forth in the note. With respect to audit committees, the functions customarily performed would include engaging and discharging the independent auditors (or recommending such actions), directing and supervising special investigations, reviewing with the independent auditors the plan and results of the auditing engagement, reviewing the scope and results of the issuer's procedures for internal auditing, approving each professional service provided by the independent auditors prior to the performance of such service, reviewing the independence of the of the independent auditors, considering the range of audit and non-audit

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[13] A proposed amendment to schedule 14A, also designated item 6(d), which would have required disclosure concerning the existence of a corporate code of conduct was published for comment in Securities Exchange Act Release No. 13185 (Jan. 19, 1977), 46 FR 4854 (Jan. 26, 1977). If the amendments proposed therein are adopted, their designation will be coordinated with the instant proposal, if such proposal is adopted.

[14] A number of similar proposed amendments to schedule 14A were published for comment prior to the institution of the Commission's reexamination of the proxy rules. As noted above, one of these proposals, which would have amended item 6 of schedule 14A to require disclosure concerning memberships on committees of the board, is superseded by proposed item 6(d). See notes 6, infra.

* Commission Karmel disagrees with this statement.

[15] Accounting Series Release No. 19 (Dec. 5, 1940).

[16] Accounting Series Release No. 165 (Dec. 20, 1974).

[17] See, CCH NYSE Guide at paragraph 2495H.

[18] Pub. L. No. 95-213, Tit. I., §§ 102-103 (Dec. 19, 1977).

[20] The Commission's Report of Investigation regarding the activities of the outside directors of National Telephone Co., Inc. underscores the need for disclosure of information which is relevant to an assessment of the adequacy of a company's committee system. Securities Exchange Act Release No. 14380, supra.

fees, and reviewing the adequacy of the issuer's system of internal accounting controls.[21] With respect to nominating committees, customary functions would include selecting (or recommending to the full board) nominees for election as directors and consideration of the performance of incumbent directors in determining whether to nominate them for reelection. The customary functions of compensation committees would include approval (or recommendation to the full board) of the remuneration arrangements for senior management and directors, adoption of compensation plans in which officers and directors are eligible to participate and granting of options or other benefits under any such plans. Finally, the note states that if the issuer has an audit, nominating or compensation committee which does not perform the functions customarily performed by such committees, it should so state and should identify those customary functions which such committee does not perform. The Commission specifically requests that commentators express their views concerning the functions customarily performed by such committees.

3. DISCLOSURE RELATING TO BOARD AND COMMITTEE MEETINGS ATTENDED—PROPOSED ITEM 6(E)

Proposed item 6(e) would require disclosure of the total number of meetings of the board of directors held since the date of the most recent annual meeting.[22] In addition, the new item would require that the issuer identify any incumbent director who since that date has attended fewer than 75 percent of the meetings of the board of directors or fewer than 75 percent of the combined total number of meetings held by all committees of the board on which he sits. In this regard, commentators are specifically invited to address whether more meaningful information would be elicited by a requirement to disclose the identity of any incumbent director who since the date of the most recent annual meeting has attended fewer than 75 percent of the aggregate number of meetings of the board of directors and meetings held by all committees on which he sits.

Recognizing that, as greater demands and responsibilities are placed on directors, the time available and the time devoted to corporate affairs by incumbent directors assume greater significance, the Commission had asked for comments and testimony concerning the desirability of requiring disclosure of the time devoted in the previous year by incumbent directors to the issuer's affairs. However, the Commission agrees with the many commentators who suggested that such a requirement would be impractical because a numerical total would be difficult to calculate and also could require substantial additional recordkeeping. Moreover, a bare statement of the amount of time spent on corporate affairs would not convey the substance of a director's contribution to the company.

Many commentators suggested, as an alternative to requiring disclosure of the total time a director has devoted to the affairs of a company, that disclosure of the number of board and committee meetings held and a director's attendance record be required instead. While the Commission believes that, as a general matter, disclosure of attendance records would be of limited usefulness, it has tentatively concluded that disclosure of a director's failure to achieve a certain minimum level of attendance could provide information which would facilitate shareholder assessment of his performance as well as the effectiveness of an issuer's board and committee system generally. In the Commission's view, the approach reflected in proposed item 6(e) would elicit such information in the briefest and least burdensome manner.

4. RESIGNATIONS OF REGISTRANT'S DIRECTORS—ITEM 5 OF FORM 8-K; ITEM 6(F) OF SCHEDULE 14A

Proposed item 5 of form 8-K and proposed item 6(f) of schedule 14A would require that in the event a director resigns or declines to stand for reelection because of a disagreement concerning the issuer's operations, policies, or practices, the issuer must report the disagreement on form 8-K and also describe it in its next proxy statement. A letter from the director stating whether or not he agrees with the description would be filed as an exhibit to the form 8-K. Similarly, prior to filing the preliminary proxy materials with the Commission, the issuer would be required to furnish the director its proposed statement on the matter. If the director disagrees with the issuer's characterization of the disagreement, he would be permitted to include in the proxy statement a brief statement presenting his views, provided he submits his statement to the issuer within 10 business days after receiving the issuer's description of the matter.

The Commission believes that disclosure of director resignations or declinations to stand for reelection is consistent with the increasing emphasis on the monitoring function of corporate boards and would provide useful information to investors in assessing the quality of management. It is also expected that the proposals could enhance the effectiveness of directors by assuring them a forum in which to express differences of opinion on matters that are sufficiently serious to result in termination of the director's association with the issuer. However, disclosure of the reasons underlying a resignation or failure to stand for reelection in the Commission's view would be unnecessary if such action is based on personal reasons. Accordingly, the scope of the proposed items is limited to resignations and declinations to stand for reelection which are based on disagreements as to the issuer's operations, policies or practices. In addition, the Commission believes it is essential that management also have an opportunity to express its views on the matter. Proposed item 6(f) of schedule 14A and proposed new item 5 of form 8-k, therefore, would afford both parties an opportunity to have input in the content of the disclosure.

[21] The Commission recognizes that the concept of an audit committee, its characteristics, and the functions it ought to perform are currently developing in an evolutionary manner. Accordingly, the note sets forth some, but not all of the functions that the Commission believes should be assumed by an effective audit committee. In its July 5, 1978 "Report to Congress on the Accounting Profession and the Commission's Oversight Role," the Commission stressed the vital importance of an independent audit committee to the proper functioning of the corporation and set forth the following functions which it believes an effective audit committee should be performing: (a) engaging and discharging auditors; (b) reviewing the engagement of the auditors, including the fee, scope and timing of the audit and any other services rendered; (c) reviewing with the auditors and management a company's policies and procedures with respect to internal auditing, accounting and financial controls; (d) reviewing with the independent auditors, upon completion of their audit, their report or opinion, their perception of the company's financial and accounting personnel, the cooperation they received during the audit, the extent to which company resources were and should be used to minimize the time spent on the audit, any significant transactions which are not a normal part of the company's business, any change in accounting principles and practices, all significant proposed adjustments and any recommendations they may have for improving internal accounting controls, choice of accounting principles, or management systems; (e) inquiring concerning deviations from the issuer's code of conduct and periodically reviewing such policies; (f) meeting with the company's financial staff at least twice a year to discuss internal accounting and auditing procedures and the extent to which recommendations made by the internal staff or by the independent auditors have been implemented; and (g) reviewing significant press releases concerning financial matters. See also, *S.E.C.* v. *Killearn Properties, Inc.* (N.D. Fla. May 2, 1977) 221 SRLR D2 (Sept. 28, 1977), for a discussion of the functions and responsibilities of an audit committee.

[22] Disclosure of the number of meetings held by the issuer's standing audit, nomination, and compensation committees would be required under proposed item 6(d).

B. Institutional Voting—Proposed Rule 14a-3(b)(11).

It has been estimated that major institutions held at the end of 1977 more than 33 percent of the total stock outstanding in the United States.[23] Because of the growth of equity security holdings of institutional investors, they are often in a position to influence corporate management through various means, including proxy voting. The role of institutions in the corporate electoral process is, therefore, an important issue in any study of corporate governance.

In recognition of the potential impact of institutional voting on corporate elections and corporate governance, generally, in connection with its proxy rule reexamination, the Commission requested comments and testimony regarding the institutional voting process. Information was sought concerning the procedures employed by institutions in voting proxies, the feasibility of obtaining voting instructions or suggestions from beneficial owners whose shares are held by institutions through pass-through voting or a polling requirement, and the desirability of requiring institutions to disclose their voting practices in annual or other reports.

The response of commentators to these questions indicated that prevailing institutional voting procedures vary greatly. On the one hand, some institutions question the extent of their obligation, as fiduciaries, to vote, particularly on shareholder proposals which may not clearly relate to a portfolio company's short term economic interest or performance. In many instances, institutions vote reflexively for management in accordance with the so-called "Wall Street Rule."[24] On the other hand, a number of institutional investors have begun to question the Wall Street Rule and have adopted formal procedures in order to assure that proposals, including shareholder proposals, are carefully considered.

Despite the concerns expressed by some commentators about the concentrations of voting power which institutions possess, both with respect to securities held for their own accounts and securities held for the account of others, substantially all of the commentators who addressed the issue of the desirability of obtaining the views of persons having an economic interest in the securities being voted, by means of a polling or pass-through voting requirement, were opposed to such a requirement. These persons suggested that such an undertaking, which would entail enormous costs and difficulties, would not be justifiable in view of the fact that those persons with an economic interest in the securities being voted often would have no direct interest in matters affecting a portfolio company and no desire to vote on them. In lieu of a pass-through voting or polling requirement, a number of commentators suggested that it would be appropriate to require institutions to report on their voting procedures, as well as their actual votes on certain issues, particularly shareholder proposals, contested issues and matters affecting the rights or privileges of the holder of the securities to be voted.

The Commission believes that the voting practices and procedures of institutions and the impact of institutional voting on the corporate electoral process are important matters and has authorized its staff to study these issues further in connection with the preparation of its comprehensive report on shareholder communications, shareholder participation in the corporate electoral process and corporate governance generally. As a preliminary step toward providing shareholders with better information concerning the exercise of voting power by institutions which are subject to the Commission's proxy rules and facilitating consideration of the impact of institutional voting on corporate governance, the Commission has determined to publish for comment proposed rule 14a-3(b)(11). In this regard, the Commission recognizes that many large institutions, such as banks, insurance companies and pension funds, are not subject to the Commission's proxy rules and therefore would not be affected by the proposed rule. The Commission is also aware that, with respect to some institutions which would be subject to the rule, the class of persons receiving the information provided in annual reports in response to proposed rule 14a-3(b)(11) would not necessarily be the class most impacted by the institutions' voting policies and procedures. Commentators are specifically invited to address these issues.

Proposed rule 14a-3(b)(11) would apply to (a) investment companies registered under the Investment Company Act of 1940; (b) parent holding companies of banks, as defined in section 3(a)(6) of the Securities Exchange Act; (c) parent holding companies of insurance companies as defined in section 2(a)(17) of the Investment Company Act of 1940; (d) parent holding companies of brokers or dealers registered under section 15 of the Securities Exchange Act; (e) brokers or dealers registered under section 15 of the Securities Exchange Act; and (f) investment advisers registered under section 203 of the Investment Advisers Act of 1940. It would require such persons to describe briefly in their annual reports to security holders their policies and procedures with respect to the voting of equity securities held by them or their subsidiaries for their own account or the account of others where such persons or their subsidiaries have the power to vote or direct the voting of such securities.

Instruction 1 is intended to clarify that no information need be given in response to the rule with respect to the voting of equity securities which are not of a class registered pursuant to section 12 of the act. In the view of the Commission, information regarding the voting of securities of family corporations and other small companies, as to which no active trading market exists, is of little interest to investors.

Instruction 2 would require affected institutions to indicate whether, with respect to the voting of equity securities held for the account of others, persons having a beneficial or other interest in the securities are consulted concerning how they are voted. If consultation procedures exist, they would be required to be described. The Commission believes that such information would be of use to investors in assessing the voting policies and procedures of affected institutions.

Instruction 3 would require a description of any formal procedures for considering "contested matters" or matters that may affect substantially the rights or privileges of the holders of the securities to be voted, such as mergers, acquisitions, disposals of a significant amount of assets and adoption of compensation plans requiring the approval of shareholders. Any existing policy with respect to how securities are voted on such matters also would be required to be described. Thus, an institution which, as a matter of policy, generally votes in favor of management on contested matters or in the alternative sells its securities would be required to so state. The Commission is of the opinion that this information is essential to an informed assessment of the quality of the procedures utilized by institutions in the voting of equity securities held for their own accounts and the accounts of others, and also is indicative of the degree to which the governance of portfolio companies may be affected by institutional voting. Instruction 3 also would require institutions to disclose, in the aggregate, the number of times contested matters and matters substantially affecting the rights of shareholders were presented and the number of times the securities were voted for and

[23] 37 SEC Statistical Bulletin 6 (June 1978).

[24] As defined by many commentators in this proceeding, the "Wall Street Rule" refers to a practice followed by some investors of voting the shares they hold in support of management's recommendation unless they are sufficiently dissatisfied with management's performance to dispose of their investment.

against the recommendations made by managements of the companies whose equity securities were voted. Additionally, institutions would be required to state the number of times they abstained from voting on such matters. In this regard, the Commission specifically requests comments as to whether such a requirement would impose any additional costs or recordkeeping burdens on affected institutions.

Instruction 4 would define the term "contested matter" to be any matter which is the subject of a counter-solicitation or which is part of a shareholder proposal opposed by management.

C. SHAREHOLDER-PROPONENT CONSIDERATION OF MANAGEMENT'S STATEMENT IN OPPOSITION TO A SHAREHOLDER PROPOSAL—PROPOSAL RULE 14a-8(e)[25]

Proposed rule 14a-8(e) would require that the issuer forward to a shareholder-proponent, not later than 10 business days before its preliminary proxy materials are filed with the Commission, a copy of any statement in opposition to the proponent's resolution that management intends to include in the corporate proxy statement. During the hearings, a number of witnesses opined that under the present system, which does not afford a proponent an opportunity to review management's statement in opposition until he receives the proxy materials in the mail, a proponent does not have a practical means of curing any misstatements which are made in the discussion of his proposal. Proposed rule 14a-8(e) is intended to provide a shareholder-proponent an opportunity to bring potentially false or misleading statements contained in opposing statements to the attention of management or the Commission before the proxy materials are mailed to shareholders. Currently, management has an opportunity to review a shareholder proposal and supporting statement, and also may, pursuant to rule 14a-8(d), 17 CFR 240.14a-8(d), omit from the proxy materials any statements that are false or misleading in violation of rule 14a-9, 17 CFR 240.14a-9.[26] Proposed rule 14a-8(e) would, by providing shareholder-proponents with a similar opportunity to object to false or misleading material in management's opposing statement before the proxy statement is mailed to shareholders, help to assure that shareholders vote on proposals without being misled by one party or the other.

The Commission recognizes that a shareholder-proponent may be in the best position to examine the opposing statement because he ordinarily would have sufficient knowledge of the facts and circumstances surronding the subject matter of the proposal to detect possible misstatements or omissions. Additionally, in view of the large numbers of proxy statements filed with the Commission each year, the Commission's role in detecting inaccuracies in the opposing statement must necessarily be somewhat limited.

Procedurally, it is contemplated that if a shareholder-proponent chooses to contact the Commission with his objections, the staff would then consider his comments in connection with its review of the issuer's proxy materials. In this regard, it is important to note that proposed rule 14a-8(e) is intended to elicit a proponent's views only to the extent that these views relate to misstatements or omissions of a factual nature; the rule is not intended to provide a forum for further debate on the issue which is the subject of the proponent's resolution.

The Commission recognizes that proxy season can impose severe timing exigencies on issuers. However, it does not believe that proposed rule 14a-8(e) would cause issuers any additional timing problems. Issuers generally will know no later than 20 days before filing their preliminary proxy materials whether a shareholder will be included[27] and therefore would have at least 10 days to draft and mail to a shareholder-proponent any statement in opposition which it intends to include in the proxy materials. Any appropriate revisions which result from a proponent's views on the statement could be made by the issuer in conjunction with other revisions made during the normal period of comment.

D. DISCLOSURE OF TERMS OF SETTLEMENT OF ELECTION CONTESTS—ITEM 3(b)(5) OF SCHEDULE 14A; ITEM 7(d) OF FORM 10Q

In its releases, the Commission asked for comments concerning what additional disclosures, if any, should be required with respect to the financing of proxy solicitations or election contests, including settlements of election contests. Commentators did not address the question of the necessity for additional disclosure relating strictly to the financing of proxy contests, and only a few commentators directly discussed the question of disclosure concerning election contest settlement terms. However, based on its experience in administering the proxy rules, the Commission is concerned that some contest settlement arrangements may reflect management interests only and may not, in fact, be in the best interests of shareholders. The Commission therefore believes that a description of the terms of election contest settlements, as contemplated by proposed item 3(b)(5), could provide shareholders with important information which would be useful in making their voting decisions.

In this regard, it should be noted that the Commission does not intend that issuers be required to file an amended proxy statement solely to disclose the terms of the settlement, if such amended proxy statement is not otherwise necessary, for example, because management's nominees have changed. In such cases, the settlement should be disclosed in the issuer's proxy statement for the next annual meeting of shareholders unless it has previously been disclosed in documents which have been filed with the Commission and disseminated to shareholders. Additionally, the terms of settlement would be required to be disclosed in the subsequent quarterly report on form 10-Q pursuant to paragraph (d) of item 7 of form 10-Q. If the settlement has already been disclosed in a filing with the Commission, proposed instruction 5 indicates that paragraph (d) of item 7 may be answered by reference to the information contained in such other filings.

III. TEXT OF PROPOSED AMENDMENTS

I. § 240.14a-3 is proposed to be amended to read as follows:

§ 240.14a-3 Information to be furnished to security holders.

* * * * * *

(b) * * *

(11) The annual report to security holders of any of the following persons shall briefly describe any policies and procedures with respect to the voting of equity securities held by such person or any of its subsidiaries for its own account or the account of others, where such person or any of its subsidiaries has the power to vote, or direct the voting of such securities.

(i) An investment company registered under the Investment Company Act of 1940;

(ii) A parent holding company of a bank as defined in section 3(a)(6) of the act;

(iii) A parent holding company of an insurance company as defined in sec-

[25] It should be noted that, as indicated above, the Commission will consider the staff's additional recommendations relating to rule 14a-8 following consideration of the proposals contained herein.

[26] See rule 14a-8(c)(3), 17 CFR 240.14a-8(c)(3).

[27] The Commission's records indicate that of all the shareholder proposals received by issuers, approximately 50 percent are included in the proxy materials without utilization of the staff's no-action procedures. Where includability is contested, in order to take advantage of the staff's no-action procedures, an issuer must file its objections with the Commission at least 50 days prior to filing its preliminary proxy materials (rule 14a-8(d)). As a general rule, the staff's no-action position is communicated to the issuer and proponent within 30 days of receipt of the issuer's objections.

tion 2(a)(17) of the Investment Company Act of 1940;

(iv) A parent holding company of a broker or dealer registered under section 15 of the act;

(v) A broker or dealer registered under section 15 of the act; and

(vi) An investment adviser registered under section 203 of the Investment Advisers Act of 1940.

Instructions. 1. No information need be given in response to this paragraph with respect to the voting of equity securities which are not of a class registered pursuant to section 12 of the act.

2. With respect to the voting of equity securities held for the account of others, indicate whether persons having a beneficial or other interest in the securities are consulted concerning how they are voted. If so, describe the method of consultation.

3. Describe any formal procedures for consideration of contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. Describe any policies with respect to how securities are voted on such matters. If any such matters were presented during the past year, indicate in the aggregate the number of times such matters were presented and the number of times the securities were voted for and against the recommendations made by managements of the entities whose securities were voted. Also indicate the number of times the securities were voted to abstain on such matters.

4. For purposes of this rule 14a-3(b)(11), the term "contested matter" refers to a matter which is the subject of a counter-solicitation or is part of a proposal made by a shareholder which is being opposed by management.

(12) Paragraphs (b)(4) through (b)(10) of this section shall not apply to an investment company registered under the Investment Company Act of 1940. Subject to the requirements of paragraphs (b)(1) through (b)(3) of this section, the annual report to security holders of such investment company may be in any form deemed suitable by management.

(13) This paragraph (b) of this section shall not apply, however, to solicitations made on behalf of the management before the financial statements are available if solicitation is being made at the time in opposition to the management and if the management's proxy statement includes an undertaking in bold face type to furnish such annual report to all persons being solicited, at least 20 days before the date of the meeting.

* * * * *

II. Section 240.14a-8 is proposed to be amended to read as follows:

§ 240.14a-8 Proposals of security holders.

* * * * *

(e) If the management intends to include in the proxy statement a statement in opposition to a proposal received from a proponent, it shall, not later than 10-business days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to rule 14a-6(a), forward to the proponent a copy of the statement in opposition to the proposal.

III. Section 240.14a-101 is proposed to be amended to read as follows:

§ 240.14a-101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 3. Persons Making the Solicitation.

* * * * *

(b) * * *

(6) If any such solicitation is terminated pursuant to a settlement between the issuer and any other participant in such solicitation, describe the terms of such settlement, including the cost or anticipated cost thereof to the issuer.

Instructions. 1. With respect to solicitations subject to § 240.14a-11 (rule X-14A-11), costs and expenditures within the meaning of this item 3 shall include fees for attorneys, accountants, public relations or financial advisers, solicitors, advertising, printing, transportation, litigation and other costs incidental to the solicitation, except that the issuer may exclude the amounts of such costs represented by the amount normally expended for a solicitation for an election of directors in the absence of a contest, and costs represented by salaries and wages of regular employees and officers, provided a statement to that effect is included in the proxy statement.

2. The information required pursuant to paragraph (5) of item 3(b) should be included in any amended or revised proxy statement or other soliciting materials relating to the same meeting or subject matter furnished to security holders by the issuer subsequent to the date of settlement.

* * * * *

Item 6. Nominees and directors. (a) * * *

(6)(i) Applicable to issuers other than an investment company registered under the Investment Company Act of 1940.

State whether he is or would be an independent director, an affiliated nonmanagement director, or a management director. If he is or would be an affiliated nonmanagement director, briefly describe the relationship by reason of which he is so deemed.

Instruction. For purposes of this item 6(a)(6) the terms "management director," "affiliated nonmanagement director," and "independent director" are defined as follows:

(1) The term "management director" refers to any person who is an officer or employee of the issuer or any of its parents, subsidiaries, or other affiliates.

(2) The term "affiliated nonmanagement director" refers to any person who:

(i) Has in the last 5 years been an officer or employee of the issuer or any of its parents, subsidiaries, or other affiliates;

(ii) Is related to an officer of the issuer, or any of its parents, subsidiaries, or other affiliates by blood, marriage, or adoption (except relationships more remote than first cousin);

(iii) Is, or has within the last 2 years been, an officer, director, or employee of, or owns, or has within the last 2 years owned, directly or indirectly, in excess of 1 percent of the equity of, any firm, corporation, or other business or professional entity:

(A) Which has made payments to the issuer for property or services during the issuer's last fiscal year in excess of 1 percent of the issuer's gross revenues for its last fiscal year or $1,000,000, whichever is less;

(B) Which proposes to make payments to the issuer for property or services during the next fiscal year in excess of 1 percent of the issuer's gross revenues for its last fiscal year or $1,000,000, whichever is less;

(C) To which the issuer was indebted at any time during the issuer's last fiscal year in an aggregate amount in excess of 1 percent of the issuer's total assets at the end of such fiscal year or $1,000,000, whichever is less;

(D) To which the issuer has made payments for property or services during such entity's last fiscal year in excess of 1 percent of such entity's gross revenues for its last fiscal year or $1,000,000, whichever is less;

(E) To which the issuer proposes to make payments for property or services during such entity's next fiscal year in excess of 1 percent of such entity's gross revenues for its last fiscal year or $1,000,000, whichever is less;

(F) In order to determine whether payments made or proposed to be made exceed 1 percent of the gross revenues of any entity other than the issuer for such entity's last fiscal year, the issuer may rely on information provided by the nominee or director;

(iv) Is a person (as owner of an equity interest in any entity or otherwise):

(A) To whom the issuer has made payments, directly or indirectly, during the issuer's last fiscal year, for property or services, in excess of $25,000 (other than fees as a director or retirement allowances); or

(B) To whom the issuer proposes to make payments, directly or indirectly, during the issuer's next fiscal year for property or services, in excess of $25,000 (other than fees as a director or retirement allowances);

(v) Is a person having a direct or indirect material interest, within the meaning of item 7(f), in any transaction required to be described in response to item 7(f);

(vi) Is a member or employee of, or is associated with, a law firm which the issuer has retained in the last 2 years or proposes to retain in the next year;

(vii) Is a director, partner, officer, or employee of any investment banking firm which has performed services for the issuer in the last 2 years or which the issuer proposes to have perform services in the next year; or

(viii) Is a control person of the issuer (other than as a director of the issuer).

(3) The term "independent director" means any person who is not included in paragraphs (1) and (2) above.

(4) Notwithstanding the definition of "independent director" in paragraph (3), above, if the issuer is aware of other relationships between the nominee and the issuer or its affiliates which, under the circumstances, reasonably could be viewed as interfering with such nominee's exercise of independent judgment, reference to such nominee as an "independent director" would be inappropriate.

(ii) Applicable to investment companies registered under the Investment Company Act of 1940.

State whether he is or would be an "interested person" of the issuer as that term is defined in section 2(a)(19) of the Investment Company Act of 1940, and briefly describe the relationship by reason of which such person is deemed an "interested person."

* * * * *

(d) State whether or not the issuer has standing audit, nominating, and compensation committees of the Board of Directors. If the issuer has such committees, identify each committee member and indicate whether he is a "management director," affiliated nonmanagement director," or "independent director," as defined in the instructions to item 6(a)(6), and state the number of committee meetings held by each such committee since the date of the most recent annual meeting of shareholders.

If the issuer has a nominating committee, state whether the nominating committee will consider nominees recommended by shareholders and, if so, describe the procedures to be followed by shareholders in submitting such recommendations.

NOTE.—In the Commission's view, the statement that an issurer has an audit, nominating, or compensation committee connotes that it has committees which perform the functions customarily performed by such committees. If the issuer has an audit, nominating, or compensation committee which does not perform the functions customarily performed by such committees, it should so state and describe which customary functions such committee does not perform.

Audit, nominating, and compensation committees customarily perform certain functions, including the following:

(1) With respect to audit committees, engagement or discharge (or recommendation to the full board of the engagement or discharge) of the independent auditors, direction and supervision of investigations into matters within the scope of its duties, review with the independent auditors of the plan and results of the auditing engagement, review of the scope and results of the issuer's internal auditing procedures, approval of each professional service provided by the independent auditors prior to the performance of such services, review of the independence of the independent auditors, consideration of the range of audit and nonaudit fees, and review of the adequacy of the issuer's system of internal accounting controls;

(2) With respect to nominating committees, selection (or recommendation to the full board) of nominees for election as directors and consideration of the performance of incumbent directors in determining whether to nominate them to stand for reelection;

(3) With respect to compensation committees, approval (or recommendation to the full board) of the remuneration arrangements for senior management and directors, adoption of compensation plans in which officers and directors are eligible to participate and granting options or other benefits under any such plans.

(e) State the total number of meetings of the board of directors (including regularly scheduled and special meetings) which have been held since the date of the most recent annual meeting of shareholders.

(1) Name each incumbent director who since the date of the most recent annual meeting of shareholder has attended fewer than 75 percent of the toal number of meetings of the board of directors held during the period for which he has been a director.

(2) Name each incumbent director who since the date of the most recent annual meeting of shareholders has attended fewer the 75 percent of the total number of meetings held by all committees of the board of directors of which he has been a member during the periods for which he has been a member.

(f) If a director has resigned or declined to stand for reelection to the board since the date of the most recent annual meeting of shareholders, and if, in connection with such resignation or declination to stand for reelection, a disagreement has been reported or is required to be reported on form 8-K, at least 20 business days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to rule 14a-6(a) the issuer shall furnish the description of the disagreement to the director with whom a disagreement has been or is required to be reported. If the director believes that the description of the disagreement is incorrect or incomplete, he may include in the proxy statement a brief statement, ordinarily not expected to exceed 200 words, relating to the description of the disagreement and presenting his view of the disagreement. In order to have such statement included in the proxy statement, it shall be submitted to the issuer within 10 days of the date the director receives the issuer's description.

* * * * *

IV. § 249.308 is proposed to be amended to read as follows:

§ 249.308 Form 8-K, for current reports.

GENERAL INSTRUCTIONS

A. * * *

B. Events to be reported and filing of reports. A report on this form is required to be filed upon the occurrence of any one or more of the events specified in the items of this form. Reports are to be filed within 15 days after the occurrence of the earliest event required to be reported. However, reports which disclose events pursuant to item 6 may be filed within 10 days after the close of the month during which the event occurred. If the letter from the independent accountants to be furnished pursuant to item 4(d) is unavailable at the time of filing, it shall be filed within 30 days thereafter. If the letter from the director to be furnished pursuant to item 5 is unavailable at the time of filing, it shall be filed as soon as reasonably possible after it has been received by the registrant. Moreover, if substantially the same information as that required by this form has been previously reported by the registrant, an additional report of the information on this form need not be made. The term "previously reported" is defined in rule 12b-2.

* * * * *

Item 5. Resignations of registrant's directors. If a director has resigned or declined to stand for reelection to the board since the date of the most recent annual meeting of shareholders because of a disagreement with the registrant on any matter relating to the registrant's operations, policies, or practices, the registrant shall state the date of such resignation or declination to stand for reelection and describe the disagreement.

The registrant shall request the director to furnish the registrant with a letter addressed to the Commission stating whether he agrees with the statements made by the registrant in response to this item and any respects in which he does not agree. The registrant shall file a copy of the director's letter as an exhibit with all copies of the form 8-K required to be filed pursuant to general instruction E.

Item 6. Other materially important events. [No change from present item 5.]

Item 7. Financial statements and exhibits. [No change from present items 6 except to add paragraph (b)(3) as follows:]

3. Letters from directors furnished pursuant to item 5.

V. § 249.308a is proposed to be amended to read as follows:

§ 249.308a Form 10-Q, for quarterly reports under section 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

Item 7. Submission of matters to a vote of security holders.

* * * * *

(d) Describe the terms of any settlement between the registrant and any other participant (as defined in rule 14a-11 of regulation 14A under the act) terminating any solicitation subject to rule 14a-11, including the cost or anticipated cost to the registrant.

Instructions. 5. If the registrant has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

5. [No change from current instruction 5.]

* * * * *

Item 9. Exhibits and reports on form 8-K.

(a) * * *

4. Copies of any published report furnished in reponse to item 7. (See item 7, instruction 6.)

(Secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 5, 6, 78 Stat. 565-568, 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3-5, 84 Stat. 1435, 1497; secs. 10, 18, 89 Stat. 119, 155; sec. 308(b), 90 Stat. 57; sec. 204, 91 Stat. 1500; 15 U.S.C. 781, 78m, 78n, 780(d), 78w(a).)

IV. OPERATION OF PROPOSALS

The Commission is mindful of the cost to registrants and others of its proposals and recognizes its responsibilities to weigh with care the costs and benefits which result from its rules. Accordingly, the Commission specifically invites comments on the costs to registrants and others of the

adoption of the proposals published herein.

Pusuant to section 23(a)(2) of the Securities Exchange Act, the Commission has considered the impact that these proposals would have on competition and is not aware, at this time, of any burden that such rules, if adopted, would impose on competition not necessary or appropriate in furtherance of the purposes of the act. However, the Commission specifically invites comments as to the competitive impact of these proposals, if adopted.

The Commission hereby proposes for comment amendments to forms 8-K (17 CFR 249.308) and 10-Q (17 CFR 249.308a), schedule 14A (17 CFR 240.14a-1 et seq.) and regulation 14A (17 CFR 250.14a-101) pursuant to sections 12, 13, 14, 15(d), and 23(a) of the Securities Exchange Act.

The Commission will endeavor to review the comments on these proposals and take such actions as may appear necessary to have the amended disclosure requirements adopted in time for compliance by issuers in the 1979 proxy season. Accordingly, the Commission would not wish to extend the comment period beyond the date originally fixed.

All interested persons are invited to submit their views and comments on the foregoing proposals in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, on or before September 18, 1978. Such communications should refer to file S7-747 and will be available for public inspection.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JULY 18, 1978.

[FR Doc. 78-20427 Filed 7-21-78; 8:45 am]

[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No. FI-2633]

NATIONAL FLOOD INSURANCE PROGRAM

Final Flood Elevation Determinations for the Borough of Glorham Park, Morris County, N.J.; Correction

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: The Federal Insurance Administration has erroneously published at 42 FR 22355 on May 25, 1978, the flood elevation determination for the Borough of Florham Park, Morris County, N.J. This notice will serve as a cancellation of that publication. A new notice of final flood elevation determination will be published in the near future.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll-free line 800-424-8872, room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 43 FR 7719).

Issued: June 22, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-20076 Filed 7-21-78; 8:45 am]

[4310-05]

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[30 CFR Chapter VII]

SURFACE COAL MINING AND RECLAMATION OPERATIONS

Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

ACTION: Release of draft regulations relating to the permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

SUMMARY: OSM has previously published two notices in the FEDERAL REGISTER concerning public participation in the preparation of rules for the permanent regulatory program and the availability of preproposed rulemaking draft rules for this program. (43 FR 25881, June 15, 1978; 43 FR 29012-29013, July 5, 1978.) This public notice announces the availability of preproposed draft rules which, when promulgated as final rules, will be included in Chapter VII of Title 30, Code of Federal Regulations.

DATES: Drafts of these regulations are being made available to the public beginning on Friday, July 21, 1978, in OSM's Headquarters in Washington, D.C. and its five regional offices. As announced in the two earlier FEDERAL REGISTER notices on this subject, public meetings on these draft rules will be held in Washington, D.C. on August 3 and 4, 1978, in Knoxville, Tenn. on August 7, 1978, in Charleston, W. Va. on August 8, 1978, in Indianapolis, Ind. on August 9, 1978, in Kansas City, Mo. on August 10, 1978, and in Denver, Colo. on August 11, 1978. The locations of the hearings were announced in the two previously published notices (43 FR 25881, June 15, 1978; 43 FR 29012, July 5, 1978). Written comments on the draft rules will be accepted for consideration for purposes of the proposed rules if received by OSM on or before August 18, 1978.

ADDRESSES: Drafts of these regulations are available at the following Surface Mining offices:

OSM Headquarters, Department of the Interior, Room 6229, 18th and C Streets NW., Washington, D.C. 20240.

OSM, Region I, First Floor, Thomas Hill Building, 950 Kanawha Boulevard East, Charleston, W. Va. 25301.

OSM, Region II, Northshore Building 2, Sixth Floor, 1111 North Shore Drive, Knoxville, Tenn. 37902.

OSM, Region III, Federal Building and Courthouse, Ohio and Pennsylvania Streets, Indianapolis, Ind. 46205.

OSM, Region IV, 601 East 12th Street, Room 1768, Kansas City, Mo. 64116.

OSM, Region V, Old Post Office Downtown, 1823 Stout Street, Denver, Colo. 80202.

Send written comments on these draft rules to:

Department of the Interior, Room 6229, 18th and C Streets, NW., Washington, D.C. 20240.

These comments and a list of public meetings with OSM staff will be available for viewing at the Washington, D.C. office from 9 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:

Patricia Foulk, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4719.

SUPPLEMENTARY INFORMATION: As noted in the June 15, 1978 FEDERAL REGISTER notice, OSM is making available drafts of the permanent program regulations prior to proposed rulemaking in order to fulfill the spirit of the SMCRA and Executive Order 12044, both of which call for early and meaningful public participation in the development of agency regulations. The draft regulations being made available at this time are not intended to reflect the final position of OSM or the Department on the content of these regulations. The content of these regulations is based in part upon the Office's review to date of available technical literature and other source material, including the legislative history of the act. Review of this materi-